IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

D.P. Soni. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 677/2001

and

Rekha Soni. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 114/2002.

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Date of Order: August 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR]

Mr. Sandeep Mehta, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

Both these criminal miscellaneous petitions under Section 482 Cr.P.C. are directed against the order dated 8.1.2001 passed by the Additional Chief Judicial Magistrate No.3, Jodhpur (for short, "the trial Court" hereinafter) in Criminal Regular Case No. 5/2001, whereby the trial Court took cognizance of the offences under Section 17-A read with Section 18-A of the Drugs and Cosmetics Act, 1940 (for short, "the Act" hereinafter). Both the petitions involved common question of law and facts and arise out of the same order, therefore, with the consent of the parties, they are being heard and decided by

this common order.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Perused the order impugned.

It is contended by the learned counsel for the petitioners that in the complaint filed by the Drugs Inspector, Jodhpur against the firm M/s. Jain Medicals & ors., the petitioners have been shown as the Directors of the firm but there is no averment that the petitioners were the Incharge of the company and also responsible for the conduct of company's business. Learned counsel has relied on the decisions of the Hon'ble Supreme Court in State of Haryana Vs. Brij Lal Mittal & ors., AIR 1988 SC 2327; and S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., 2005 Cr.L.R. (SC) 762. Learned counsel further submits that Section 34 of the Act provides the offences by a company. Sub-section (1) of Section 34 provides that where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

I have carefully gone through the complaint filed by Mr. Raja Ram Sharma, the Drugs Inspector, Jodhpur before the

trial Court. Petitioner D.P. Soni has been arraigned as accused No.8 and petitioner Rekha Soni has been arraigned as accused No.8. In the body of the complaint, they have been shown as the Directors of the company. On careful perusal of the complaint, it has no where been averred in the complaint that the petitioners, being the Directors of the company, were incharge of and were responsible to the company for the conduct of business of the company.

In State of Haryana Vs. Brij Lal Mittal (supra), the Hon'ble Supreme Court held that so far as Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. It was held by Their Lordships that there is no indication to indicate even prima facie that they were incharge of the company or responsible to the company for the conduct of its business.

The provisions of Section 141 of the Negotiable Instruments Act, 1881 (for short, "the Act, 1881" hereinafter) are para meteria of the provisions of Section 34 of the Act. Recently, the Hon'ble Supreme Court, while considering the provisions of Section 141 of the Act, 1881 in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhall (supra) held that it is

necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 of the Act 1881 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141of the Act 1881 cannot be said to be satisfied.

Keeping in view the decisions of the Hon'ble Supreme Court and the fact that there is no allegation or averment in the complaint to indicate even prima facie that the present petitioners, who are Directors, were the incharge of the compnay and also responsible to the the company for the conduct of its business and, therefore, the requirement of Section 34 of the Act has not been fulfilled. In the circumstances, therefore, the proceedings in the complaint filed against the present two petitioners deserve to be quashed.

In the result, both these criminal miscellaneous petitions are allowed. The impugned order dated 8-1-2001 passed by the trial Court, qua the petitioners, is set aside and the criminal complaint qua the present petitioners is quashed.

(H.R. PANWAR), J.

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